

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ADAN MENDOZA

Claimant

VS.

NATIONAL BEEF PACKING CO.

Respondent

AND

WAUSAU UNDERWRITERS INS. CO.

Insurance Carrier

Docket No. 250,774

ORDER

Claimant appeals Administrative Law Judge (ALJ) Pamela J. Fuller's August 14, 2002, Decision. The Appeals Board (Board) heard oral argument on February 4, 2003.

APPEARANCES

The claimant appeared by his attorney, Stanley R. Ausemus of Emporia, Kansas. The respondent and its insurance carrier appeared by their attorney, Kerry E. McQueen of Liberal, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and has adopted the stipulations listed in the Decision.

ISSUES

This is a claim for bilateral upper extremity and neck injuries claimant suffered while performing repetitive work activities for the respondent. The parties agreed to an August 27, 1999, accident date for a series of accidents caused by claimant's repetitive work activities. Work disability was not an issue because claimant continues to work for

the respondent at the same pre-injury average weekly wage. Based on a whole body permanent functional impairment, the ALJ awarded claimant a 3 percent permanent partial general disability.

Claimant appeals and argues a more accurate and persuasive permanent functional impairment opinion contained in the record is the opinion of orthopedic surgeon, Lee R. Dorey, M.D. Dr. Dorey examined claimant at his attorney's request and assessed claimant with a 26-28 percent whole body permanent functional impairment. Accordingly, the claimant requests the Board to modify the ALJ's Decision to a 26-28 percent permanent partial general disability.

In contrast, the respondent requests the Board to affirm the Decision. The respondent contends that the 3 percent whole body permanent functional impairment rating opinion as expressed by orthopedic surgeon, C. Reiff Brown, M.D., the court-appointed independent medical examiner, is the most accurate and persuasive functional impairment rating contained in the record. Moreover, the respondent contends the 3 percent rating best represents the extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record, considering the briefs and the parties' arguments, the Board makes the following findings and conclusions:

The Board finds the Decision should be affirmed. The Board agrees with the findings of fact and conclusions of law as set out in the Decision. Accordingly, the Board finds it is not necessary to repeat those findings and conclusions in this Order. The Board, therefore, adopts the ALJ's findings and conclusions as its own as if it specifically set forth herein.

The Board also agrees with the ALJ's analysis of the evidence as set forth in the Decision. In particular, the Board finds the court-appointed independent medical examiner, Dr. Brown's 3 percent permanent whole body functional impairment opinion best represents the extent of claimant's disability resulting from his work-related injuries. The Board finds, although claimant has expressed numerous subjective pain complaints, there is no evidence in the record that he missed any work; he takes no medication for his pain; the only medical treatment respondent had to provide for claimant's injuries consisted of two weeks of physical therapy; and, claimant has not requested any additional medical treatment for his injuries.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that ALJ Pamela J. Fuller's August 14, 2002, Decision is affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of March 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
Kerry E. McQueen, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Director, Division of Workers Compensation